



COUNTY OF LOS ANGELES DEPARTMENT OF HUMAN RESOURCES

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August 27, 1998

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

25

SEP 8 1998

Joanne Sturges
JOANNE STURGES
EXECUTIVE OFFICER

BASIC EMPLOYMENT VERIFICATION PILOT (ALL DISTRICTS) (3-VOTES)

IT IS RECOMMENDED THAT YOUR BOARD:

1. Instruct the Director of Personnel, on behalf of Los Angeles County, to approve and sign the Memorandum of Understanding (MOU), Attachment A, which has been approved as to form by County Counsel, for the Basic Employment Verification Pilot, a cooperative pilot project among the Social Security Administration (SSA), the Immigration and Naturalization Service (INS) and the County of Los Angeles, that will provide confirmation of employment eligibility for newly hired County employees.
2. Instruct the Director of Personnel (or designee) to serve as the principal County liaison and administrator for the Employment Verification Pilot and to submit the signed MOU to the SSA and the INS for execution.
3. Authorize the Director of Personnel, in concert with ten selected County Departments, to implement the Pilot upon receipt of the fully executed MOU and upon receipt of project software and training provided by the INS.
4. Authorize the Director of Personnel to negotiate and execute MOU amendments, after approval as to form by County Counsel, during the term of the Pilot, to expand County participation by adding more departments and offices to the enhanced Integrated Basic Pilot, provided both the initial pilot and the integrated pilot have been performing satisfactorily and provided the system has sufficient capacity to accommodate expansion.

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PURPOSE OF RECOMMENDED ACTION

The proposed MOU stems from the Board instruction issued on December 2, 1997 to submit an application to the INS for the County to participate in their Basic Pilot program. This program will allow departments to verify the legal employment status of new employees via a telephone inquiry to the SSA and, if needed, a follow-up inquiry to the INS. The Director of Personnel was designated by the Board as the point of contact for the pilot program and as the coordinator among County departments. The application was submitted, and Los Angeles County was subsequently selected as one of the employers for the pilot. The MOU describes the agreements and responsibilities of the parties joining in the cooperative project. Approval and execution of the MOU would initiate the implementation of the pilot project and allow the SSA and INS to provide system software and training needed to conduct the pilot.

Implementation will be incremental, beginning with ten departments identified in the MOU attachment. These departments currently meet all pilot requirements. Representatives from the INS have made assurances that by November 1998, an enhanced pilot system will be available which will reduce system requirements. All other departments will be added as soon as it is feasible, provided the enhanced pilot functions well with the initial ten participants. Coordinators from each location have been contacted and are preparing to participate in the pilot project.

JUSTIFICATION

The Department of Justice and the INS require that each employee hired fill out an Employment Eligibility Verification Form (I-9) and show appropriate documentation to the employer that the individual is living legally in the United States and is authorized to work in this country. Currently, without the proposed pilot, these documents must be accepted on their face as valid. Employers are also required to track and update documentation on any employee whose work authorization has expired.

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The Basic Employment Verification Pilot will provide confirmation of the employment eligibility of a newly hired employee after the Form I-9 has been completed. The program will verify the validity of the documentation, the accuracy of the Social Security Number and the legal eligibility for employment and will facilitate Los Angeles County's remaining in full compliance with the law. Severe sanctions may be levied upon employers who have knowingly hired unauthorized aliens and also upon employers who continue to employ aliens knowing that they have become unauthorized to work in the United States. Penalties may reach as high as \$10,000 for each instance in which an unauthorized alien is employed under those circumstances.

FISCAL IMPACT

The proposed agreement will have minimal fiscal impact. The County of Los Angeles will not be charged for the verification services provided under the proposed MOU. Software, training, operation manuals, verification services and technical support will be provided free of charge by the SSA and the INS. The County will be responsible for providing the necessary telephone systems and computer equipment at each hiring location required to conduct I-9 verification. Costs may be incurred if telephone and equipment upgrades are needed at some hiring locations. Any additional communication costs will be absorbed within the Board adopted 1998-99 budget for each affected department.

FINANCING

No additional funding is required.

FACTS AND PROVISIONS

The pilot project procedures will supplement the existing INS verification process and will not be conducted until after an employee has been hired and the Form I-9 has been completed. The project provisions also limit the types of documents the County will accept to establish identity when completing the Employment Eligibility Verification form (Form I-9). Traditionally, Form I-9 "List B" documents included a driver's license or other federal, state, or local government issued ID card containing a photograph; school ID card

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containing a photograph; voter's registration card; US Military card or draft record; military dependent's ID card; US Coast Guard Merchant Mariner Card; Native American tribal document; or Canadian driver's license. Under the pilot, Los Angeles County would be required to limit the acceptance of "List B" documents to only those which contain a photograph.

The Basic Pilot will involve sending telephone inquiries to access data bases of the SSA and also involve sending computer inquiries to the INS. Alphabetic data must be manually translated into numeric for transmission by phone. Each character of each field of data entered by phone will be echoed back to the sender to help ensure accuracy. If the system can verify the Social Security Number, an immediate confirmation reply will be returned. If the Social Security Number is not verifiable, the system will perform a more thorough investigation and may prompt the inquirer for additional information before a final response is returned. As needed, the system will prompt the employer to send an inquiry to the INS, resulting in a separate inquiry being created and submitted using a computer and modem.

An enhanced Integrated Basic Pilot is currently under developmental testing and should be available in November of 1998. This improved version will provide links between the data bases of SSA and INS. All inquiries will be initiated via computer and modem. The telephone will no longer be used to enter an inquiry, and multiple inquiries can be sent in the same transmission. Data to be transmitted will be easily reviewed and edited on the computer before it is sent. If required, the initial inquiry will be automatically routed to the INS component, eliminating the need for a separate follow-up inquiry sent by the employer. Eliminating the telephone system requirements will greatly facilitate adding the other County participants.

Within the MOU for the Basic Pilot, the SSA and INS agree to establish a means of verification that is designed to provide confirmation or tentative nonconfirmation of an employee's employment eligibility within three work days of the initial inquiry. They also agree to establish a means of secondary verification to provide final confirmation or nonconfirmation of the employee's employment eligibility within ten work days of the date of referral for employees who contest tentative nonconfirmations.

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The minimum system requirements consist of a touch tone telephone and a personal computer with a modem. The computer must be IBM compatible with a DOS operating system and a 286 CPU. The modem must be at least 2400 baud. Also required is a dedicated analog voice grade phone line which results in only one phone number being recognized as the originating phone number. Many of the verification sites do not yet have the compatible telephone system. The telephone and dedicated analog phone line are required to send inquiries to the SSA during the Basic Pilot but will not be necessary once SSA and INS inevitably shift to the Integrated Basic Pilot. Any employer already participating in the Basic Pilot would also be required to shift to the integrated system.

Representatives from the Department of Human Resources and the Chief Administrative Office have met with the Coalition of County Unions to explain the program, answer questions and distribute explanatory documents. The other unions were also notified and they did not have any questions regarding the Basic Pilot.

The attached MOU has been submitted to County Counsel for review and has been approved as to form.

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IMPACT ON CURRENT SERVICES (OR PROJECTS)

Approval of this MOU will result in the implementation of the Basic Employment Verification Pilot. This will enhance the effectiveness of the County's employment eligibility verification, reduce the possible use of fraudulent documents, increase the accuracy of employee Social Security Numbers, and facilitate compliance with and enforcement of the Immigration and Nationality Act. The Department of Human Resources will be responsible for policy, monitoring reports and administrative overview as the designated coordinators for the Pilot. This Pilot will increase the work required by the departmental human resources staff to process new employees and terminate unauthorized employees; however, the resulting enhancement will be to better ensure that available jobs are reserved for those who are legally authorized to work in the United States.

Respectfully submitted,


MICHAEL J. HENRY
Director of Personnel

MJH:BAC
LT:AE

Attachment (1)

c: Chief Administrative Officer
Executive Officer, Board of Supervisors
County Counsel
Auditor-Controller
Department Heads

i-9pilot.bhr

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BASIC EMPLOYMENT VERIFICATION PILOT

MEMORANDUM OF UNDERSTANDING

ARTICLE I

PURPOSE

This Memorandum of Understanding (MOU) sets forth the points of agreement between the Social Security Administration (SSA), the Immigration and Naturalization Service (INS) and the County of Los Angeles (Employer) regarding the Employer's participation in the Basic Employment Verification Pilot ("Basic Pilot"). The Basic Pilot is a pilot program in which the employment eligibility of all newly hired employees will be confirmed after the Employment Eligibility Verification Form (Form I-9) has been completed.

The information that SSA and the INS will obtain from the Employer under the terms of this MOU will be used only to verify the accuracy of Social Security Numbers and employment eligibility, to enforce the Immigration and Nationality Act (INA), to enforce Federal criminal laws, and to ensure accurate wage reports to the SSA.

This MOU will in no way interfere with or abridge employees' rights under the Privacy Act or other Federal laws that govern their right to request access to, or correction of, information about them in the records of the SSA and the INS, or to request an appeal of a denial of such requests.

ARTICLE II

AUTHORITY

Authority for the Basic Pilot is found in Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009.

ARTICLE III

GENERAL INFORMATION

This MOU is to be carried out by Employer personnel and SSA and INS employees. For purposes of this agreement, SSA and INS employees include those employees of corporations under contract with SSA or the INS to assist with the Basic Pilot.

The Basic Pilot procedures are to be used for all employees hired by the Employer on or after the date that this MOU is signed by all parties and in effect, at the following hiring sites (attach additional sheet if necessary): see Attachment A. The Employer shall not use Basic Pilot procedures until after the employee has been hired and the Form I-9 has been completed. Form I-9 procedures shall remain the same as those prescribed by section 274A(b) of the INA and 8 C.F.R. Part 274a, except that a Form I-9

BASIC EMPLOYMENT VERIFICATION PILOT

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"List B" identity document must contain a photograph. The Basic Pilot shall not be used as a pre-employment screening device, as a means of facilitating any type of unlawful employment practice, or for any reason other than as set forth in this MOU. This MOU must be signed prior to the Employer exchanging information with SSA or the INS under the Basic Pilot procedures.

The Basic Pilot involves separate verification checks (if necessary) of databases maintained by the SSA and the INS. The first step for verifying the work eligibility of a newly hired employee through the Basic Pilot is the Employer's inquiry to the SSA using a toll free telephone number (this may be changed to personal computer access during the course of the Basic Pilot). In many cases, this inquiry will result in immediate telephonic verification of work eligibility. If the SSA is unable to verify work eligibility, either because the information submitted by the Employer does not match any SSA record, or because the information matches an SSA record which does not confirm work eligibility, SSA's telephonic response will instruct the Employer to take additional verification steps.

The fact that a telephonic inquiry to SSA does not result in immediate verification does not mean, and should not be interpreted as, an indication that the employee is not work authorized. Many SSA records -- particularly older ones -- do not contain information about citizenship or immigration status. The Basic Pilot's additional procedures are designed to verify the work eligibility of all individuals for whom immediate telephonic verification is not possible, in a way that minimizes inconvenience to employees and employers while ensuring that no work-authorized individual will be denied any employment opportunity as a result of work eligibility verification procedures.

Depending on the type of SSA record (if any) pertaining to the employee, the Employer will receive one of several messages concerning additional verification steps if work eligibility cannot be confirmed by telephone. In some cases, the Employer will be instructed that a "tentative nonconfirmation" has resulted. In other cases, the Employer will be instructed to refer to the employee's attestation in section 1 of the Form I-9 as to whether the employee is a citizen or national of the United States. If the employee has attested on the Form I-9 that he or she is a citizen or national of the United States, the Employer will be instructed either that work eligibility is confirmed, or that the employee should be considered tentatively nonconfirmed. If the employee has attested on the Form I-9 that he or she has a status other than citizen or national of the United States, the Employer will be instructed to make an automated verification inquiry to the INS.

The SSA messages will not provide Social Security personal earnings account information about the employee.

If the Employer receives a tentative nonconfirmation from SSA regarding an employee, the Employer must determine whether the employee contests the tentative nonconfirmation. If the employee does not contest the tentative nonconfirmation, it becomes a final nonconfirmation. If the employee chooses to contest the tentative nonconfirmation, he or she must visit an SSA office within 8 Federal Government work days after the date of the employee's referral to SSA to update his or her SSA record. On the date that is 10 Federal Government work days after the date of the referral, the Employer will make another inquiry of the SSA database, which will result in either a confirmation, a final nonconfirmation, or in some cases additional instructions.

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The INS verification procedures are limited to certain employees who have attested on the Form I-9 that they are not U.S. citizens or nationals. The INS verification procedures will not be necessary in all such cases, and should not be initiated unless the Basic Pilot instructs the Employer to initiate them after the Employer has confirmed on the Form I-9 that the employee has attested that he or she is not a U.S. citizen or national. In many cases, the SSA will be able to verify the work eligibility of alien employees; if so, INS verification is unnecessary and should not be conducted. The INS verification procedures are not designed for employees who have certified on the Form I-9 that they are U.S. citizens or nationals, and should not be attempted for such persons.

The INS automated verification involves an electronic inquiry to the INS' Alien Status Verification Index (ASVI) database using certain information from the employee's Form I-9. The INS database will respond either by confirming work authorization, or by requiring additional information relating to the employment eligibility documentation submitted by the employee in order to permit the INS to conduct additional searches of its records. Within 3 Federal Government work days of the initial query, the INS will furnish a response of either confirmation of work eligibility or a tentative nonconfirmation. An INS request for more information, or a tentative nonconfirmation, does not mean that the employee is not authorized and the Employer may not interpret it as such. There are many reasons why a work-authorized individual may be the subject of a tentative nonconfirmation. If the employee contests a tentative nonconfirmation, he or she is provided an opportunity to clarify his or her employment status by contacting the INS within 8 Federal Government work days following the employee's referral to the INS. Within 10 Federal Government work days following the referral, the INS will either confirm work authorization or provide the Employer with a final nonconfirmation. In some cases, the Employer will receive a message "case in continuance," meaning the INS needs additional time to confirm work eligibility.

The Employer may not terminate or take any other adverse action against an employee whose verification inquiry is pending with SSA or the INS (whether during the 10-day period for secondary verification, or after the expiration of that period if the case has not yet been resolved) for any reason related to work authorization status unless the Employer obtains knowledge (as defined in 8 C.F.R. § 274a.1(l)) that the employee is not work authorized. The employer may take action for other reasons unrelated to the Basic Pilot or to employment eligibility, such as poor job performance.

An Employer receiving a final nonconfirmation from the SSA or the INS with regard to an employee may terminate the employee, and shall not be civilly or criminally liable under any law for the termination, as long as the action was taken in good faith reliance on information provided through the confirmation system. If the Employer does not terminate an employee after final nonconfirmation, the Employer must notify the INS of that fact. If the final nonconfirmation came from the INS, that notification is made through the automated system. If the final nonconfirmation came from SSA, the Employer should notify the INS of continued employment either by certified mail to the U.S. Immigration and Naturalization Service, 425 I Street, NW, ULLICO - 4th Floor, Washington, DC 20536, Attention: SAVE Program; or by fax to the SAVE Program at (202) 514-9981.

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If the Employer fails to notify the INS of continued employment after receiving final nonconfirmation, the failure is deemed a violation of section 274A(a)(1)(B) of the INA for failure to comply with proper hiring procedures, and the Employer may be assessed a civil money penalty between \$500 and \$1,000 per violation. An employer continuing to employ an individual after receiving a final nonconfirmation could also be subject to legal penalties under section 274A(a)(1) of the INA. Section 403(a)(4)(C)(iii) of IIRIRA establishes a rebuttable presumption that an employer who continues to employ an individual after receiving final nonconfirmation has knowingly employed an unauthorized alien.

An Employer participating in any of the pilots agrees not to discriminate unlawfully against any individual in hiring, firing, or recruitment practices because of his or her national origin or, in the case of a protected individual as defined in section 274B(a)(3) of the INA, because of his or her citizenship status. Such illegal practices can include discharging or refusing to hire eligible employees because of their foreign appearance or language. An employer also violates the anti-discrimination provision if it requests more or different documents than are required under section 274A of the INA, or refuses to honor documents that on their face reasonably appear to be genuine, for the purpose or with the intent of discriminating against an individual because of his or her citizenship or national origin. Violation of the unfair immigration-related employment practices provisions of the INA could subject the Employer to civil penalties and the payment of lost wages pursuant to section 274B of the INA. If the Employer has any questions relating to the anti-discrimination provision, it should contact the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), Civil Rights Division, U.S. Department of Justice at 1-800-255-7688 or 1-800-237-2515 (TDD).

ARTICLE IV

FUNCTIONS TO BE PERFORMED

A. RESPONSIBILITIES OF THE SSA

1. Upon completion of the Form I-9 by the employee and the Employer, and provided the Employer complies with the requirements of this MOU, SSA agrees to provide the Employer with available information that will allow the Employer to confirm the accuracy of Social Security Numbers provided by newly hired employees and the employment authorization of newly hired employees when SSA's records indicate U.S. citizenship or nationality, or work-authorized alien status.
2. The SSA agrees to provide to the Employer advice or other assistance, as appropriate, on related policy or operational problems that may arise during the Employer's participation in the Basic Pilot. The SSA agrees to provide the Employer with names, titles, addresses, and telephone numbers of SSA representatives to be contacted during the Basic Pilot.
3. The SSA agrees to issue to the Employer a personal identification number (PIN) and password that will permit the Employer to access the SSA database for the information described above in Article IV, A.1. by use of a toll free telephone service, or a personal computer with modem.

BASIC EMPLOYMENT VERIFICATION PILOT

MEMORANDUM OF UNDERSTANDING

4. The SSA agrees to safeguard the information provided by the Employer through the Basic Pilot procedures, and to limit access to such information, as is appropriate by law, to individuals responsible for the verification of Social Security Numbers and for evaluation of the Basic Pilot or such other persons or entities who may be authorized by the SSA as governed by the Privacy Act (5 U.S.C. § 552a), the Social Security Act (42 U.S.C. 1306(a)), and SSA regulations (20 CFR Part 401).

5. SSA agrees to establish a means of automated verification that is designed (in conjunction with such INS automated verification as may be necessary) to provide confirmation or tentative nonconfirmation of employees' employment eligibility within 3 Federal Government work days of the initial inquiry.

6. SSA agrees to establish a means of secondary verification (including updating SSA records as may be necessary) for employees who contest SSA tentative nonconfirmations that is designed to provide final confirmation or nonconfirmation of the employees' employment eligibility within 10 Federal Government work days of the date of referral to SSA, unless it determines that more than 10 days may be necessary. In such cases, SSA will provide additional verification instructions.

B. RESPONSIBILITIES OF THE INS

1. Upon completion of the Form I-9 by the employee and the Employer, and completion by the Employer of SSA verification procedures required prior to initiation of INS verification procedures, the INS agrees to provide the Employer access to selected data from the INS' ASVI database to enable the Employer to conduct automated verification checks on newly hired alien employees by use of a personal computer and modem.

2. The INS agrees to provide to the Employer advice or other assistance, as appropriate, on related policy or operational problems that may arise during the Employer's participation in the Basic Pilot. The INS agrees to provide the Employer names, titles, addresses, and telephone numbers of INS representatives to be contacted during the Basic Pilot, including one or more individuals in each INS district office covering an area in which the Employer hires employees covered by this MOU.

3. The INS agrees to provide to the Employer a manual containing instructions on the Basic Pilot policy, procedures and requirements, including restrictions on use of Basic Pilot procedures (the Basic Pilot Manual). The Basic Pilot Manual will contain instructions for Basic Pilot procedures for both the SSA and the INS. The INS agrees to provide training materials on the Basic Pilot.

4. The INS agrees to provide to the Employer a notice which indicates the Employer's participation in the Basic Pilot. The INS also agrees to provide to the Employer anti-discrimination notices issued by OSC.

5. The INS agrees to issue the Employer an access code, user identification number, and password that will permit the Employer to verify information provided by alien employees with INS' ASVI database.

BASIC EMPLOYMENT VERIFICATION PILOT

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6. The INS agrees to safeguard the information provided to the INS by the Employer, and to limit access to such information to individuals responsible for the verification of alien employment eligibility and for evaluation of the Basic Pilot, or to such other persons or entities as may be authorized by applicable law.
7. The INS agrees to refer information received in the course of the Basic Pilot indicating that the Employer has engaged in unlawful immigration-related employment practices to OSC.
8. The INS agrees to establish a means of automated verification that is designed (in conjunction with SSA verification procedures) to provide confirmation or tentative nonconfirmation of employees' employment eligibility within 3 Federal Government work days of the initial inquiry.
9. The INS agrees to establish a means of secondary verification (including updating INS records as may be necessary) for employees who contest INS tentative nonconfirmations that is designed to provide final confirmation or nonconfirmation of the employees' employment eligibility within 10 Federal Government work days of the date of referral to the INS, unless it determines that more than 10 days may be necessary. In such cases, the INS will provide additional verification instructions.

C. RESPONSIBILITIES OF THE EMPLOYER

1. The Employer agrees to hire only individuals who are authorized to work in the United States, as required by law.
2. The Employer agrees to display the notices supplied by the INS in a prominent place that is clearly visible to prospective employees.
3. The Employer agrees to provide the names, titles, addresses, and telephone numbers of Employer staff who will be the principal users of the Basic Pilot to SSA and the INS. The Employer designates the Director of Personnel, or his designee, to serve as the primary point of contact with the SSA and the INS for the Basic Pilot. The Employer agrees to provide project coordination through the Director of Personnel for all matters under the Basic Pilot and among all Employer departments.
4. The Employer agrees to become familiar with and comply with the Basic Pilot Manual.
5. The Employer agrees to allow the INS and SSA, or their authorized agents or designees, to make periodic visits to the Employer for the purpose of reviewing Basic Pilot-related records, i.e., Form I-9's, SSA Transaction Records, and INS verification records, that were created during the Employer's participation in the Basic Pilot Program. In addition, for the purpose of evaluating the Basic Pilot, the Employer agrees to allow the INS and SSA or their authorized agents or designees, to interview it regarding its experience with the Basic Pilot, to interview employees hired during the Basic Pilot concerning their experience with the pilot, and to make employment and Basic Pilot-related records available to the INS and the SSA, or their designated agents or designees.

BASIC EMPLOYMENT VERIFICATION PILOT

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6. The Employer agrees to comply with the statutory and regulatory requirements of the employment verification system and with the instructions in the INS Handbook for Employers (M-274) regarding required employment verification (Form I-9) procedures, with one exception: The Employer agrees that it will only accept Form I-9 "List B" documents (those documents identified in 8 C.F.R. § 274a.2(b)(1)(B)) presented to establish identity by employees subject to Basic Pilot verification that contain a photograph.

7. The Employer understands that participation in the Basic Pilot does not exempt the Employer from the responsibility to complete, retain, and make available for inspection Forms I-9 that relate to its employees, or from other requirements of applicable regulations or laws, except for the following modified requirements applicable by reason of the Employer's participation in the Basic Pilot: (1) identity documents must have photographs, as described in paragraph 6 above; (2) a rebuttable presumption is established by section 403(b) of IIRIRA that the Employer has not violated section 274A(1)(A) of the INA with respect to the hiring of any individual if it obtains confirmation of the identity and employment eligibility of the individual in compliance with the terms and conditions of the Basic Pilot; (3) the Employer must notify the INS if it continues to employ any employee after receiving a final nonconfirmation, and is subject to a civil money penalty between \$500 and \$1,000 for each failure to notify the INS of continued employment following a final nonconfirmation; (4) the Employer is subject to a rebuttable presumption that it has knowingly employed an unauthorized alien in violation of section 274A(1)(A) if the Employer continues to employ any employee after receiving a final nonconfirmation; and (5) no person or entity participating in the Basic Pilot shall be civilly or criminally liable under any law for any action taken in good faith on information provided through the confirmation system. The INS reserves the right to conduct Form I-9 compliance inspections during the course of the Basic Pilot, as well as to conduct any other enforcement activity authorized by law.

8. The Employer agrees to initiate the Basic Pilot verification procedures within 3 Employer business days after each employee has been hired (but after both sections 1 and 2 of the Form I-9 have been completed), and to complete as many steps of the Basic Pilot process as are necessary according to the Basic Pilot Manual. The Employer is prohibited from initiating verification procedures before the employee has been hired and the Form I-9 completed. If the automated system to be queried is temporarily unavailable, the 3-day time period is extended until it is again operational in order to accommodate Employers attempting, in good faith, to make inquiries during the period of unavailability. In each case, the Employer will only perform those Basic Pilot verification procedures that are necessary in order to verify the employee's employment eligibility according to this MOU and the Basic Pilot Manual.

9. The Employer agrees to record the transaction code provided by SSA, for each SSA verification inquiry. This code should be recorded on the Verification Transaction Record for the employee whose status is being verified. The Employer also agrees to record the INS verification number on the employee's Form I-9 or to print the screen containing the verification number and attach it to the employee's Form I-9.

10. The Employer agrees to provide information for the verification of employment eligibility in accordance with the Basic Pilot instructions to SSA and the INS and to retain all Verification Transaction Records for at least 4 years for management information and evaluation purposes. A copy of the Verification Transaction Record shall also be kept with the employee's Form I-9.

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11. The Employer agrees not to take any adverse action against an employee based upon the employee's employment eligibility status while SSA or the INS is processing the verification request unless the Employer obtains knowledge (as defined in 8 C.F.R. § 274a.1(l)) that the employee is not work authorized. The Employer understands that it may be subject to legal penalties under section 274A of the INA if it knowingly hires or knowingly continues to employ an unauthorized alien.

12. The Employer agrees not to use the Basic Pilot procedures for pre-employment screening of job applicants, support for any unlawful employment practice, or any other use not authorized by this MOU. The Employer will not verify selectively; it agrees to use the Basic Pilot procedures for all new hires as long as this MOU is in effect. The Employer agrees not to use Basic Pilot procedures for reverification, or for employees hired before the date this MOU is in effect who are continuing in their employment. The Employer understands that should the Employer use the Basic Pilot procedures for any purpose other than as authorized by this MOU, the Employer may be subject to appropriate legal action and the immediate termination of its access to SSA and INS information pursuant to this MOU.

13. The Employer agrees not to discriminate unlawfully against any individual in hiring, firing, or recruitment practices because of his or her national origin or, in the case of a protected individual as defined in section 274B(a)(3) of the INA, because of his or her citizenship status. The Employer understands that such illegal practices can include discharging or refusing to hire eligible employees because of their foreign appearance or language. The Employer understands that any violation of the unfair immigration-related employment practices provisions of the INA could subject the Employer to civil penalties pursuant to section 274B of the INA and the termination of its participation in the Basic Pilot.

14. The Employer agrees that it will use the information it receives from the SSA or the INS pursuant to the Basic Pilot and this MOU only to confirm the employment eligibility of newly-hired employees after completion of the Form I-9. The Employer agrees that it will safeguard this information as appropriate to ensure that it is not used for any other purpose and as necessary to protect its confidentiality, including ensuring that this information is not disseminated to unauthorized persons who are not involved in verification functions.

15. The Employer agrees that the SSA will verify Social Security Numbers of its employees solely as specified under the terms of this MOU. The Employer also acknowledges that the information which it receives from SSA is governed by the Privacy Act (5 U.S.C. § 552a(i)(1) and (3)) and the Social Security Act (42 U.S.C. 1306(a)), and that any person who obtains this information under false pretenses or uses it for any purpose other than as provided for in this MOU may be subject to criminal penalties.

16. The Employer agrees not to disseminate the password, access code, user identification number, and PIN for the Basic Pilot to anyone other than its employees who are authorized to perform its responsibilities under this MOU.

BASIC EMPLOYMENT VERIFICATION PILOT

MEMORANDUM OF UNDERSTANDING

ARTICLE V

REFERRAL OF INDIVIDUALS TO THE SSA AND THE INS

A. REFERRAL TO THE SSA

1. The Employer will refer individuals to SSA field offices only as directed by the automated system based on a tentative nonconfirmation, and only after the Employer records the transaction code, reviews the input to detect any transaction errors, and determines that the employee contests the tentative nonconfirmation. The Employer will transmit the Social Security Number to SSA for verification again if this review indicates a need to do so. The Employer will determine whether the employee contests the tentative nonconfirmation as soon as possible after the Employer receives it.

2. If the employee contests an SSA tentative nonconfirmation, the Employer will provide the employee with a referral letter and recommend that the employee visit an SSA office to resolve the discrepancy within 8 Federal Government work days. At the same time, Employer will advise the employee that failure to resolve the nonconfirmation with the SSA may result in termination of employment. The Employer will make a second inquiry to the SSA database using the Basic Pilot procedures on the date that is 10 Federal Government work days after the date of the referral in order to obtain confirmation, or final nonconfirmation.

3. The Employer agrees not to ask the employee to obtain a printout from the Social Security Number database (the Numident) or other written verification of the Social Security Number from the SSA (other than the Social Security Number Card).

B. REFERRAL TO THE INS

1. The Employer agrees to refer individuals to the INS only when the verification response received from the INS automated verification process indicates a tentative nonconfirmation, and the employee contests the tentative nonconfirmation. The Employer will determine whether the employee contests the tentative nonconfirmation as soon as possible after the Employer receives it.

2. If the Employer receives a tentative nonconfirmation from the INS, the Employer will record the verification code and date on the Form I-9 or print the screen showing the verification number and attach the printout to the Form I-9, determine whether the employee contests the tentative nonconfirmation, and recommend that the employee who contests contact the INS to resolve the discrepancy within 8 Federal Government work days using Basic Pilot procedures. At the same time, Employer will advise the employee that failure to resolve the nonconfirmation with the INS may result in termination of employment. The INS will electronically transmit the result of the referral to the Employer within 10 Federal government work days of the referral.

BASIC EMPLOYMENT VERIFICATION PILOT

MEMORANDUM OF UNDERSTANDING

ARTICLE VI

SERVICE PROVISIONS

The SSA and the INS will not charge the Employer for verification services performed under this MOU. The Employer shall be responsible for providing equipment needed to make inquiries. Equipment needed for participation in the Basic Pilot includes a personal computer with a modem, and a touch tone telephone (and modem, if the same device) on a phone line which results in only one phone number being recognized as the originating phone number, regardless of whether it is controlled through a switch, private branch exchange (PBX), or direct outward dialing - this line should be an analog voice grade line.

ARTICLE VII

PARTIES

This MOU is effective upon the signature of all parties, and shall continue in effect for as long as the SSA and the INS conduct the Basic Pilot unless modified in writing by the mutual consent of all parties, or terminated by any party upon 30 days prior written notice to the others. Termination by any party shall terminate the MOU as to all parties. The SSA or the INS may terminate this MOU without prior notice if deemed necessary because of the requirements of law or policy, or upon a determination by SSA or the INS that there has been a breach of system integrity or security by the Employer, or a failure on the part of the Employer to comply with established procedures or legal requirements (including anti-discrimination provisions of section 274B of the INA, 8 U.S.C. § 1324b).

Nothing in this MOU is intended, or should be construed, to create any right or benefit, substantive or procedural, enforceable at law by any third party against the United States, its agencies, officers, or employees, or against the County of Los Angeles, its agents, officers, or employees.

Each party shall be solely responsible for defending any claim or action against it arising out of or related to the Basic Pilot or this MOU, whether civil or criminal, and for any liability therefrom, including (but not limited to) any dispute between the Employer and any other person or entity regarding the applicability of Section 403(d) of IIRIRA to any action taken or allegedly taken by the Employer.

The foregoing constitutes the full agreement on this subject between the SSA, the INS, and the Employer.

BASIC EMPLOYMENT VERIFICATION PILOT

MEMORANDUM OF UNDERSTANDING

The individuals whose signatures appear below represent that they are authorized to enter into this MOU on behalf of the Employer, the SSA, and the INS respectively.

County of Los Angeles

By *Michael J. Henry*
Michael J. Henry
Director of Personnel

9-25-98
Date



Attest:

Joanne Sturges
Executive Officer-Clerk
of the Board of Supervisors

By *Bruce L. Crouchet*
Deputy

Approved as to Form:

Lloyd W. Pellman
County Counsel

By *O. Kelly*
Deputy

Social Security Administration

Sherry Walker
Name (Please type or print)

Project Manager
Title

Sherry Walker
Signature

10/6/98
Date

Immigration and Naturalization Service

John E. Nahan
Name (Please type or print)

Director, SAVE
Title

John E. Nahan
Signature

10/5/98
Date

**LOS ANGELES COUNTY
IMMIGRATION AND NATURALIZATION SERVICE
SOCIAL SECURITY ADMINISTRATION
BASIC EMPLOYMENT VERIFICATION PILOT HIRING SITES**

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